

REMARKS**Rejections under 35 U.S.C. § 102**

Claims 7-9 and 23 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,380,294 ("Babinec"). Applicant has amended independent claims 7 and 8 to include a cross-linkable, expandable blank comprising, *inter alia*, a blowing agent and water in an amount of from 3 to 6 phr. (Claims 7 and 8).

MPEP § 2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

Applicant asserts that a *prima facie* case of anticipation has not been provided because the cited prior art fails to disclose each and every element as set forth in the pending claims. Specifically, Babinec fails to disclose that the material to make the foaming polymer gel includes water *in addition to* the blowing agent.

Furthermore, as the Examiner points out, Babinec discloses up to 9 phr (parts per hundred polymer) of water as the blowing agent while Applicant discloses adding a preferred amount of blowing agent ranging between about 15 and 30 phr. (*See*, Specification, ¶ 18). Applicant further discloses that an adequate amount of blowing agent is added to provide the cross-linked expanded support with an amount of blowing agent greater than 2 phr and preferably greater than 5 phr of the blowing agent. (*See*, Specification, ¶ 32). Applicant has therefore added new claims to further describe the claimed invention. (Claims 24-28).

Therefore, because the Babinec fails to disclose each and every element of independent claims 7 and 8, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claims 7 and 8 dependent claims 9 and 23, which depend therefrom.

Rejections under 35 U.S.C § 103(a)

Claims 10-15 and 17-22 stand rejected under 35 U.S.C. 102(c) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,380,294 ("Babinec"). Applicant claims a cross-linked expanded elastomeric safety support comprising a blowing agent in an amount greater than 2 phr (Claim 10), wherein the blowing agent is azobisformamide. (Claim 11).

As stated in the remarks, *supra*, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).


Applicant asserts that a *prima facie* case of anticipation, or in the alternative, of obviousness, has not been presented because the cited prior art fails to disclose, teach or suggest each and every limitation or element of the pending claims. Specifically, Babinec fails to disclose, teach or suggest that the product comprises a blowing agent (and specifically azobisformamide) in an amount greater than 2 phr. While Babinec teaches that a blowing agent is added to the gel mix before being expanded, Babinec fails to disclose, teach or suggest that an adequate amount of blowing agent is added to provide a residual amount to the expanded product amounting to greater than 2 phr.

Therefore, because the cited prior art fails to disclose, teach or suggest each and every element of limitation of the pending claims, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claims 10 and 11 as well as for all claims depending therefrom.

Patent
Attorney Docket No.: P10-1215.DIV

Applicant respectfully asserts that all claims are now in condition for allowance and requests the timely issuance of the Notice of Allowance. If the Examiner believes that a telephone interview would expedite the examination of this pending patent application, the Examiner is invited to telephone the below signed attorney at the convenience of the Examiner. In the event there are any fees or charges associated with the filing of these documents, the Commissioner is authorized to charge Deposit Account No. 13-3085 for any necessary amount.

Respectfully submitted,



Frank J. Campigotto
Attorney for Applicant
Registration No. 48,130
864-422-4648